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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1945.

LEWIS EDWIN LEICHTY, Deceased,
MRS. L. E. LEICHTY, Claimant,
Respondent,

vs.

KANSAS CITY BRIDGE COMPANY,
Petitioner.

No. 746

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

BERT E. STRUBINGER,
Counsel for Respondent.

STRUBINGER, TUDOR & TOMBRINK,
Of Counsel.

St. Louis Law Printing Co., 415 North Eighth Street. CEntral 4477.

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STATEMENT.

Respondent believes the statement of petitioner, although abbreviated, contains sufficient facts to apprise this Honorable Court of the question petitioner seeks to present, and since the Court will no doubt have recourse to the transcript of the record, respondent, in the interest of brevity, will make no further statement of the facts.

ARGUMENT.

The petitioner (p. 2, petition for writ) states that the question involved is:

> "Whether the Supreme Court of Missouri, in holding that Mrs. L. E. Leichty was the widow of Lewis Edwin Leichty and therefore entitled to recover for the death of Lewis Edwin Leichty the compensation provided by the Missouri Workmen's Compensation Law, denied full faith and credit under Article IV, Section 1, of the United States Constitution, to the decree of divorce obtained September 20, 1935, by Lewis Edwin Leichty against Mrs. L. E. Leichty in the District Court of Wyandotte County, Kansas."

The evidence contained in the record of this case came before five different tribunals or bodies for consideration, to-wit, the Commissioner, the full Missouri Compensation Commission, the Circuit Court of St. Charles County, Missouri, Division One of the Missouri Supreme Court and the Missouri Supreme Court en banc, and all of them found from the facts disclosed in the record that fraud had been perpetrated upon the District Court of Wyandotte County, Kansas, by Lewis Edwin Leichty, whereby that Court was caused to assume jurisdiction, when in reality it never acquired jurisdiction over the defendant, Mrs. L. E. Leichty, in the divorce action. This evidence caused the Missouri Supreme Court en banc to state in its opinion (pp. 109, 110, Tr. of Rec.):

> "We need say little on the remaining point relative to the sufficiency of the evidence. If believed it shows that deceased not only falsely swore as to his knowledge of his wife's residence, but took active steps to prevent her from knowing of the divorce suit. This was a violation of the requirement for due process under the Kansas Statute and a fraud upon the Court. We must assume that, if the facts were presented to

> the Court which granted the divorce, the decree would not be recognized as valid. Certainly we are not required to recognize it."

To set out this evidence would needlessly prolong this discussion and take up this Honorable Court's time.

Petitioner cites several Kansas cases (p 7, petition for writ) which it contends hold that notwithstanding the false affidavit made in the divorce case the Kansas Court was not deprived of jurisdiction and hence the Missouri Supreme Court in holding that the Kansas Court failed to acquire jurisdiction because of the apparent and flagrant fraud shown by the record did not give full faith and credit to the decisions of Kansas Courts. Petitioner takes the stand that regardless of the apparent fraud, and even in the face of fraud which the evidence shows has entered into procuring the decree, the decree must stand and cannot be attacked in another state when such decree is brought forward and introduced in evidence for the purpose of defeating the rights of the person affected by the decree. Such reasoning would surely be a travesty on justice if permitted to prevail.

The Missouri Supreme Court in Bonnett-Brown Sales Service v. Utt, 323 Mo. 589, 19 S. W. 2d 888, l. c. 891, a case of similar nature, said in reference to an Illinois judgment:

> "The judgment sued on may be perfectly valid in Illinois and enforced against any property of defendant in that state. But in any event, it is void and of no effect in this state, for the reason that the Municipal Court of Chicago in which it was rendered did not acquire jurisdiction over the defendant."

We are of the same opinion as the Missouri Supreme Court (pp. 109, 110, Tr. of Rec.) that upon the record here the Kansas Court would also have held the decree void.

We note that Petitioner has failed to mention or in any way refer to the late decision of this Honorable Court, that of Williams v. State of North Carolina, 65 S. Ct. 1092. We believe that this Honorable Court has set at rest the question as to whether a judgment of a sister state can be **collaterally** attacked or impeached in another state for want of jurisdiction. In the Williams case this Honorable Court said, l. c. 1095:

> "A judgment in one state is conclusive upon the merits in every other state, but only if the Court of the first state had power to pass on the merits—had jurisdiction, that is, to render the judgment. It is too late now to deny the right **collaterally** to impeach a decree of divorce made in another state, by proof that the Court had no jurisdiction, **even when the record purports to show jurisdiction.** It was 'too late,' more than forty years ago. German Savings & Loan Society v. Dormitzer, 192 U. S. 125, 128, 24 S. Ct. 221, 222, 48 L. Ed. 373." (Emphasis ours.)

And in the same opinion, at l. c. 1096, this Honorable Court said:

> "* * * what is true is that all the world need not be present before a Court granting the decree and yet it must be respected by the other forty-seven states **provided**—and it is a big proviso—**the conditions for the exercise of power by the divorce-decreeing Court are validly established whenever that judgment is elsewhere called into question.** In short, the decree of divorce is a conclusive adjudication of everything except the jurisdictional facts upon which it is founded * * *." (Emphasis ours.)

And again in the same opinion, at l. c. 1097, this Honorable Court said:

> "**But simply because the Nevada Court found it had power to award a divorce decree cannot, we have seen, foreclose re-examination by another state.** Otherwise,

as was pointed out long ago, a Court's record would establish its power and the power would be provided by the record. Such circular reasoning would give one state a control over all other states which the full faith and credit clause certainly did not confer." (Emphasis ours.)

As indicated and held by this Honorable Court in the Williams case, the right to collaterally impeach for want of jurisdiction the judgments and decrees of Courts of sister states is an inherent right vested in those who are sought to be bound by such judgments or decrees when they are set up or called into question in other states, and that the exercise of such right does not violate the Full Faith and Credit Clause of the United States Constitution.

Petitioner states (p. 16, petition for writ) that the decision of the Missouri Supreme Court in the instant matter is contrary to the doctrine announced by this Honorable Court in the case of Meidreich v. Lauenstein (232 U. S. 236, 58 L. Ed. 584). A study of this case, in our opinion, indicates it is not in point at all. There the action was to vacate a judgment of foreclosure, one of the grounds alleged being that plaintiff had not been served with summons although the sheriff had made a return of service on plaintiff. The charge was that the sheriff made a false return. This Court in its opinion, l. c. 244, among other things, stated that "the false return was not procured by fraud of the plaintiff * * * in the foreclosure suit." It was further stated in the opinion of this Court that the party suffering the damage by the false return of the sheriff was protected by the sheriff's bond and that a person so damaged is given a remedy on such bond and therefore is not denied due process of law by the enforcement of the judgment.

In the instant proceeding the Bridge Company was not interested in whether Mr. Leichty was married or single or divorced. As a matter of fact, there is nothing in the

record of the proceedings to indicate they knew anything concerning the status of Mr. Leichty prior to his death or that they were relying on any particular status in employing Mr. Leichty. The rights of innocent third parties were not involved as was indicated in the Miedreich v. Lauenstein case, supra. In the instant matter the Bridge Company had accepted the compensation act and agreed to pay compensation to the dependents of Mr. Leichty, whoever they might be. The widow having proved her status as a dependent is entitled to this compensation.

It is now well settled by the decisions of this Honorable Court, as in Williams v. State of North Carolina, 65 S. Ct. 1092, l. c. 1095, and Cole v. Cunningham, 133 U. S. 107, l. c. 112, and other cases of this Court, that the judgments and decrees of sister states can be impeached collaterally in other states when such judgments and decrees are questioned or put in evidence. This rule is recognized in Bonnett-Brown Sales Service v. Utt, 19 S. W. 2d, l. c. 891, 323 Mo. 589; Topalian Bros. v. Asadorian, 104 S. W. 2d 713 (Mo. App.); Woods v. Washington Fidelity U. Ins. Co., 113 S. W. 2d 121 (Mo. App.); Stevens et ux. v. Thomasson, 160 Pac. 2d 338 (Ariz. Sup. Ct. 1945); 15 R. C. L., Sections 411, 412, pages 935 and 937; 9 R. C. L., Section 340, p. 520, and by the courts in most of our states.

The application of this rule in no way violates the Full Faith and Credit Clause of the United States Constitution, as was held in Williams v. State of North Carolina, 65 S. Ct. 1092, l. c. 1097, and other cited cases.

The Kansas cases cited by Petitioner, as was indicated in the opinion of the Missouri Supreme Court in the Leichty case (p. 123, Tr. of Rec.), are distinguishable from the facts in the instant case.

Not desiring to prolong the discussion, since all the tribunals which have had the facts presented to them have sustained claimant's position and status as the widow and

dependent of deceased, we submit that upon the record here this case is not a proper one for review by certiorari in this Court and that the petition for the writ of certiorari should be denied.

Respectfully submitted,

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